

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

GREGORY LEON MORRIS

V.

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 5:15-CV-137

MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Movant Gregory Leon Morris, a federal prisoner, proceeding *pro se*, filed this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The Court referred this matter to the Honorable Caroline Craven, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends denying the motion. Docket No. 15. Movant acknowledged receipt of the Report and Recommendation on February 27, 2018. Docket No. 16. No objections to the Report and Recommendation were filed.

Because Movant did not file objections to the Report and Recommendation, this Court reviews the Magistrate Judge's findings of fact and conclusions of law for plain error. *Rodriguez v. Bowen*, 857 F.2d 276, 276–77 (5th Cir. 1988). Having reviewed the Report, the Court agrees with the Magistrate Judge that this matter should be dismissed for waiver, for failure to meet the burden of proof on his actual innocence claim and because Movant would have had a full and fair opportunity to litigate any Fourth Amendment issues in the state courts. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge as the findings and conclusions of this Court.

Additionally, the Court finds that Movant is not entitled to a certificate of appealability. An appeal from a judgment denying federal habeas corpus relief may not proceed unless a judge issues a certificate of appealability. See 28 U.S.C. § 2253; FED. R. APP. P. 22(b). The standard for granting a certificate of appealability requires the petitioner to make a substantial showing of the denial of a federal constitutional right. See *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000); *Elizalde v. Dretke*, 362 F.3d 323, 328 (5th Cir. 2004); see also *Barefoot v. Estelle*, 463 U.S. 880, 893 (1982). To make a substantial showing, the petitioner need not establish that she should prevail on the merits. Rather, the petitioner must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. See *Slack*, 529 U.S. at 483–484. Any doubt regarding whether to grant a certificate of appealability is resolved in favor of the petitioner, and the severity of the penalty may be considered in making this determination. See *Miller v. Johnson*, 200 F.3d 274, 280–281 (5th Cir.), *cert. denied*, 531 U.S. 849 (2000).

Here, Movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. The factual and legal questions advanced by Movant are not novel and have been consistently resolved adversely to his position. In addition, the questions presented are not worthy of encouragement to proceed further. Therefore, Movant has failed to make a sufficient showing to merit the issuance of a certificate of appealability, and a certificate of appealability will not be issued.

SIGNED this 24th day of July, 2018.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE